

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC., ) CASE NO. 1:08-CV-2755  
  )  
Plaintiff,                          ) JUDGE DONALD C. NUGENT  
  )  
v.                                  ) **STATUS REPORT OF PLAINTIFF**  
  ) **HODELL-NATCO INDUSTRIES, INC.**  
SAP AMERICA, INC., et al.          )  
  )  
Defendants.                          )

Plaintiff Hodell-Natco Industries, Inc. (“Hodell”), in compliance with the Court’s Civil Jury Trial Order [ECF #312], submits the following Status Report in preparation for the Final Pretrial to be held June 2, 2015.

**I. LEGAL ISSUES REMAINING**

Hodell’s Amended Complaint [ECF #26] asserted five causes of action against Defendants SAP America, Inc. and SAP AG (collectively “SAP”), LSi-Lowery Systems, Inc. (“LSi”) and The IBIS Group, Inc. (“IBIS”): (1) fraudulent inducement; (2) fraud; (3) breach of contract; (4) negligence; and (5) negligent misrepresentation. SAP and LSi/IBIS asserted cross-claims against each other, and LSi/IBIS asserted a counterclaim against Hodell.

Hodell’s negligence claim against both SAP Defendants was dismissed pursuant to a Motion to Dismiss filed by SAP, as was Hodell’s breach of contract claim based upon the Development Agreement. [ECF #61]. The Court also dismissed Hodell’s breach of contract claim against SAP AG in its entirety. [*Id.*] The Court subsequently granted summary judgment to LSi and IBIS on Hodell’s negligence claim. [ECF #192].

As a result, the remaining claims against SAP are: (1) fraudulent inducement; (2) fraud; (3) breach of contract (against SAP America, Inc. only) relating to the License Agreement; and (4) negligent misrepresentation.

On February 12, 2015, the Court entered an Order of default against IBIS and LSi, thereby entering default against LSi/IBIS pursuant to Fed.R.Civ.P. 55(a) and further dismissing each of the LSi/IBIS cross-claims and counterclaims. [ECF #280].

Other outstanding issues to be addressed prior to or during trial include:

1. On October 13, 2014, Judge Wells entered an Order on a motion *in limine* excluding Hodell's damages expert, Dr. G. William Kennedy, from testifying at trial. [ECF #248]. Hodell contends that this Order was a clear error of law and that a reconsideration of that Order is necessary to prevent manifest injustice. Hodell intends to file a Motion for Reconsideration of that Order and/or requests a *Daubert* hearing or leave to proffer Dr. Kennedy's testimony at trial in order to demonstrate the admissibility of his opinions and testimony.

2. SAP has filed a motion *in limine* to preclude Hodell's CEO from testifying as to his own calculation of damages. Hodell contends that Judge Wells has already denied SAP's prior motion *in limine* raising these same arguments [See Order dated January 28, 2015], and in any event, the motion is not well taken as Otto Reidl's testimony is clearly admissible under Fed.R.Evid. 701. This issue has been fully briefed; however, Hodell believes that oral argument on the motion may be beneficial.

3. Pursuant to the Civil Jury Trial Order, Hodell has filed a Motion requesting leave to present certain testimony at trial by remote videoconference. Judge Wells previously granted Hodell leave to present remote testimony during the February 18, 2015 Final

Pretrial. SAP has opposed that Motion and the issue has been fully briefed.

**II. SETTLEMENT DISCUSSIONS**

The parties discussed settlement, but SAP did not present an offer. Hodell remains open participating in any such discussions.

Dated: May 26, 2015

Respectfully submitted,

/s/ P. Wesley Lambert

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 26, 2015, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access the document through the Court's electronic filing system.

/s/ P. Wesley Lambert

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